HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.296 OF 2006

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Between:

M/s. Sudhakar Associates, represented by

its sole proprietor Mr. K. Sudhakar Rao,

Aged about 47 years, R/o. 1-2-133,

Kalasiguda, Secunderabad

...Appellant

AND

The Superintending Engineer,

Operation Circle, A.P. Transco,

NPDCL, Nizamabad and two others

...Respondents

::JUDGMENT::

Counsel for the Petitioners : Sri C.V.R. Rudra Prasad

Counsel for Respondents No.1: Smt. Rachana S. Wadelepalli

and 2:

March 24, 2006

Per Shri G.S.Singhvi, CJ

Having failed to persuade the learned Single Judge to entertain his challenge to the termination of contract by Andhra Pradesh Transmission Corporation Limited (for short 'the Corporation'), the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The Andhra Pradesh State Electricity Board (for short, 'the Board') through Superintending Engineer, Operation Circle, Nizamabad entered into an agreement with M/s.Sudhakar Associates on 8-6-1989 for maintaining the accounts in respect of slab card service of the specified areas i.e., Bodhan ERO and Yellareddy ERO, Nizamabad District. The term of the agreement was five years, but the same was renewed from time to time. During the currency of the renewal period, the Board was abolished and four different companies, including the Corporation, were created. The subject matter of agreement entered into between the Board and M/s.Sudhakar Associates fell within the domain of the Corporation. At one stage, the agreement was cancelled on account of the appellant's failure to abide by the terms and conditions specified therein, but on its request and assurance to comply with the terms and conditions of the agreement, the same was revived. Vide communication No.SE/ OP/NZB/SAO/JAO/CRS/D.No.1003/02 dated 26-9-2002, Superintending Engineer, Operation Circle, NPDCL, Nizamabad informed M/s.Sudhakar Associates that it had again failed to act in accordance with the terms of agreement. It would be worthwhile to reproduce the relevant extract of communication dated 26-9-2002. The same read as under:

> "As per the orders under reference 1st cited, the agreement entered by you

was cancelled for non-satisfactory performance and non-compliance to the due dates of work but again on your written request with assurance to adhere to terms and conditions of agreement entered to by you and considering your request, the agreement has been renewed conditionally.

But again you have failed to adhere to due dates of which few are furnished below:

1. **SPOT BILLING:**

As per the standing orders, the spot billing of all villages to be completed by 30-9-2002.

But the spot billing position is as follows:

	'A' Group	8/02	'B' Group	9/02
Mandal	Total Villages	Attended	Total Villages	Attended
Varni	17	2	14	1and balance in progress and uncertain.
Kotagiri	14	2	17	1
E.R.O./Yellareddy	46	3	66	9

The spot billing programmed for completion by 30-9-2002 but no possibility.

2. Computers are not installed and no regular liaison representative at ERO Head Quarter.

3. Spot billing Bill Book Abstract due for issue on 10-8-2002, 20-8-2002, 31-8-2002 not furnished as on 13-9-02.

4. 'D' list of spot billing due on 1-9-02 and 12-9-02 not furnished as on 13-9-02.

5. Domestic services M.M. Charges of Rs.50-00 not effected in spot billing.

6. In respect of Meter Stuckup Services, no average programme.

7. Agricultural services L.P. varies from bills to ledger.

It is to reiterate here once again that the remuneration paid per service is about Rs.3.50 is good and is being paid irrespective of collection from consumers.

Hence, this contract work shall be primary one with regular constant touch duly adhering to due dates as being the public utility company answerable to consumers in particular and public in general.

Hence, under the circumstances, please take notice that why the agreement shall not be terminated with immediate effect for the details furnished above in the interest of consumers and NPDCL Company."

In reply, the representative of M/s.Sudhakar Associates virtually admitted its failure to abide by the terms of agreement. The same is evident from paragraphs 1, 2 and 3 of reply communication dated 7-12-2002, which read as under:

"1) SPOT BILLING:

In 8/02, I have covered the big distributions comprising majority of billable services. I could not cover all villages in 8/02 due to following reasons:

a. There was shortage of spot billing machines (SBM's) with the sole supplier Analog Technologies and hence I could not purchase additional SBM's. There was technical problem with my existing SBM's which had to be brought to Hyderabad for repair resulting in loss of time.

b. Since we work for backward area, there is customer resistance to spot billing, some of whom are being issued bills for the first time. There were threats and assaults on our boys. There is no A.E. posted at Gandhari & Birkur to help us to cover the areas by deputing linemen to accompany our boys. This matter was already brought to the notice of the AAO & SAO. At Beermal Tanda the villagers damaged the motor cycle of our boys. In Kotagiri Mandal we were told that the A.E. was beaten up and we were asked to stop spot billing for some days.

c. In Yellareddy ERO, the services are thinly spread out over a large geographical area e.g., in Lingampet Mandal there are about 2,100 services in 21 villages. Our boys were not willing to take up the work.

In September '02, I took up the challenge and purchased extra machines, deployed additional boys, paid them more and covered all villages in B group 100% September '02.

You have stated in your letter that billing work in only 11 villages is attended up to the date of your letter which, I submit, is not correct. The ERO's are fully aware that I have covered 65% of services upto 20-09-2002 and this fact was stated by me in the CMD meetings held at Kamareddy and Nizamabad on 20-09-02 and 21-09-02 respectively. I affirm that we have since COVERED ALL VILLAGES IN 9/2002 and issued BBA's.

I assure you that I shall cover all villages in A group in October without fail.

2) I have already installed a computer at Bodhan in July '02. In reply to a letter from Yellareddy ERO insisting on installing another computer at Yellareddy, I had requested you vide my letter to permit me to do work for Yellareddy from the Bodhan computer center since I have only about 20,000 services in Yellareddy. I am now shifting my computer to Nizamabad.

3) I already have one representative at Bodhan named Kanaka Raju and another at Yellareddy named Siddi Ramulu. Due to problems in spot billing, they are devoting more time in coordinating the work of spot billing boys on the field. Once matters are streamlined, they would be able to spare more time in the ERO.

…"

After considering the reply of M/s.Sudhakar Associates, the Superintending Engineer concerned terminated the agreement and appointed M/s.Raju & Raju, Private Accounting Agency (respondent No.3) for billing and accounting, including spot billing work at Gandhari, Birkur and Lingampet.

M/s.Sudhakar Associates challenged the termination of agreement and appointment of respondent No.3 for doing the work allotted to it by filing petition under Article 226 of the Constitution of India. The pleaded case of M/s.Sudhakar Associates was that the action taken by respondent No.1 i.e., Superintending Engineer, Operation Circle, Nizamabad is vitiated due to violation of the rules of natural justice and arbitrary exercise of power. According to M/s.Sudhakar Associates, it had not committed deliberate breach of the terms of agreement, but the Superintending Engineer arbitrarily terminated the agreement and assigned the work to the third respondent.

In the counter-affidavit filed by Sri M. Durgaiah, Superintending Engineer, Operation Circle, NPDCL, Nizamabad it was averred that the decision to terminate the agreement was taken because the writ petitioner repeatedly violated the terms of the agreement and did not improve despite repeated reminders and warnings.

On a consideration of the pleadings of the parties and the arguments of their counsel, the learned Single Judge opined that it was not a fit case for exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. She observed that the agreement entered into between M/s.Sudhakar Associates and the Board was non-statutory in character and violation of the terms thereof could be made actionable only by availing common law remedy.

Learned counsel for the appellant made strenuous efforts to persuade us to upset the order of the learned Single Judge by arguing that once the writ petition is admitted, the same cannot be dismissed at the stage of final hearing only on the ground of availability of alternative remedy. In support of this argument, learned counsel heavily relied on the judgment of the Division Bench in **Estate Officer and Manager (Recoveries), APIICL v. Recovery Officer**.

Learned counsel for respondents No.1 and 2 supported the order of the learned Single Judge and argued that in exercise of power under Article 226 of the Constitution of India, this Court cannot decide contentious issues of fact. She further argued that the discretion exercised by the learned Single Judge not to entertain the appellant's prayer to interfere in a contractual matter does not suffer from any legal infirmity warranting interference by the Division Bench.

We have thoughtfully considered the respective submissions. In our opinion, the learned Single Judge would have been justified in dismissing the writ petition on the ground of non-impleadment of the Corporation as a party respondent. Admittedly, the Corporation is one of the four companies created as a sequel to the dissolution of the Board. It is also not in dispute that the Corporation was not impleaded as respondent in the writ petition. The Superintending Engineer, Operation Circle, A.P. Transco, NPDCL, Nizamabad and Executive Engineer (Finance), NPDCL, are only officers of the Corporation and not the Corporation, which is a juridical body. If the claim of the appellant was to be accepted by the learned Single Judge, the same would have resulted in imposing financial burden on the Corporation and this could not have been done because of its non-impleadment as party respondent.

This view of ours is based on the decision of the Supreme Court in **Ranjeet Mal v. General Manager, Northern Railway, New Delhi**. In that case, the appellant had challenged his dismissal from service and impleaded General Manager, Northern Railway and other subordinate officers as party respondents. A learned Single Judge of Rajasthan High Court dismissed the writ petition on the ground that Union of India has not been impleaded as party respondent. This view was confirmed by the Division Bench. While approving the orders and judgment of the Single and Division Benches of the High Court, the Supreme Court held as under:

> "The Union of India represents the Railway administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the

matter of removal. It cannot be denied that any order, which will be passed on an application under Article 226 which will have the effect of setting aside the removal, will fasten liability on the Union of India, and not on any servant of the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the petitioner was. Therefore, the Union of India is a necessary party to the proceedings and hence, the High Court was justified in rejecting the petition because the Union of India was not made party to the proceedings."

De hors the above conclusion, we have considered the appellant's plea that the order under challenge is vitiated by error of law, but have not felt persuaded to agree with its counsel, Sri C.V.R. Rudra Prasad. It is true that the order passed by the learned Single Judge does not contain detailed reasons for arriving at a conclusion that in a matter involving breach of the non-statutory contract, the High Court will not entertain petition under Article 226 of the Constitution of India, but we are convinced that the view taken by her is in consonance with the settled law and there is no reason for us to upset the same.

Though the language of Article 226 does not suggest that there is any restriction on the exercise of power of the High Court to issue directions or orders or writs including writs in the nature of certiorari, prohibition, mandamus, quo-warranto and habeas corpus, the superior courts have over the years evolved some rules of self-imposed restraint, including the one that a petition filed under Article 226 will not be entertained if an effective alternative remedy is available to the petitioner. In early Fifties and Sixties, the High Courts were extremely reluctant to entertain matters involving challenge to the action taken by public authority to award contract etc. or to terminate the same. **D.F.O., South Kheri v. Ram Sanehi Singh** is one of the earliest decision in which the Supreme Court entertained challenge in a contractual matter. In that case, the Supreme Court held that where the action of a public authority invested with statutory powers is challenged, the writ petition is maintainable even though the right to relief arises out of the alleged breach of contract. In later years, the Court expanded the width and amplitude of the High Court's power to issue writs in contractual matters by laying down that every action of the State and its instrumentalities and agencies is liable to be tested on the touchstone of fairness and public interest. Reference in this connection can appropriately be made to the often-quoted decisions of the Supreme Court in

Ramana Dayaram Shetty v. International Airport Authority, **Ajay Hasia v. Khalid Mujib Sehravardi**, **Som Prakash Rekhi v. Union of India**, **Dwarkadas Marfatia & Sons v. Board of Trustees, Bombay Port**, **Mahabir Auto Stores v. India Oil Corporation** and **Shrilekha Vidyarthi v. State of U.P**. In the last mentioned judgment, the Supreme Court ruled that every State action including those falling in the realm of contract can be made subject matter of adjudication under Article 226 of the Constitution. The guiding principles laid down in **Shrilekha Vidyarthi** (supra) are:

> "It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See **Ramana Dayaram Shetty v. International Airport Authority of India** (1978) 3 SCR 1014 : AIR 1979 SC 1628 and **Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir** (1980) 3 SCR 1338 : AIR 1980 SC 1992). In **Col. A.S. Sangwan v. Union of India** 1980 Supp SCC 559 : AIR 1981 SC 1545, while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

Notwithstanding the wider expanse and meaning given to the High Court's power to issue writs and orders in matters involving challenge to the action of the State and public authorities, the Courts have repeatedly held that extra-ordinary jurisdiction will not be exercised for adjudicating rights arising out of non-statutory contracts, more so when adjudication of such rights or claims involve investigation into contentious issues of fact. In **State of U.P. v. Bridge & Roof Co.(India) Ltd.**, the Supreme Court reversed the order of Allahabad High Court and held that dispute relating to terms of private contract deserves to be adjudicated by way of arbitration

or institution of civil suit and not by filing writ petition under Article 226 of the Constitution. The observations made and principles laid down in that decision are reproduced below:

> "15. In our opinion, the very remedy adopted by the respondent is misconceived. It is not entitled to any relief in these proceedings, i.e., in the writ petition filed by it. The High Court appears to be right in not pronouncing upon any of the several contentions raised in the writ petition by both the parties and in merely reiterating the effect of the order of the Deputy Commissioner made under the proviso to Section 8-D(1).
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> 16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.
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> 17. Secondly, whether there has been a reduction in the statutory liability on account of a change in law within the meaning of sub-clause (4) of clause 70 of the contract is again not a matter to be agitated in the writ petition. That is again a matter relating to interpretation of a term of the contract and should be agitated before the arbitrator or the civil court, as the case may be. If any amount is wrongly withheld by the Government, the remedy of the respondent is to raise a dispute as provided by the contract or to approach the civil court, as the case may be, according to law. Similarly if the Government says that any overpayment has been made to the respondent, its remedy also is the same.

In **State of H.P. v. Rajendra Mahedra Pal**, the Supreme Court reiterated the rule that the High Court should not entertain petitions for enforcement of contractual rights and held:

"(1) The powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual rights arising out of an efficacious alternative remedy. The constitutional court should insist upon the party to avail of the same instead of invoking the extraordinary writ jurisdiction of the court. This does not however debar the court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of an alternative efficacious remedy. The existence of the special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said article. In the instant case, the High Court did not notice any special circumstance which could be held to have persuaded it to deviate from the settled proposition of law regarding the exercise of the writ jurisdiction under Article 226.

(2) For exercise of the writ jurisdiction the High Court also erred in pressing into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of the utmost importance, violation of which, as and when found, directly or indirectly, or even remotely, has to be looked upon with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claims relating to the legal or contractual rights of the parties completely ignoring the person approaching the court and the alleged violation of the said right. The High Court in this case adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226. The High Court wrongly assumed jurisdiction for the purposes of conferring the State largess of public money upon an unscrupulous litigant who preferred his claim on his proclaimed assumption of being as important as the Government of the State and equal thereto."

In **Kerala State Electricity Board v. Kurien E.Kalathil**, the Supreme Court held as under:

"The interpretation and implementation of a clause in a contract

> cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. ……..A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

In **World Tel Inc. v. Union of India**, the Supreme Court held that where claim for refund of money together with interest is based on contractual obligations, the High Court should not go into the merits of such claim under Article 226 of the Constitution of India.

By applying the ratio of the aforementioned judgments to the facts of this case, we hold that the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for quashing of the decision taken by the Superintending Engineer to cancel the agreement entered into between M/s Sudhakar Associates and the Corporation.

While making the aforementioned observation, we are conscious of the fact that majority of cases coming before the High Courts do require some adjudication on the issues of facts also. In **State of Orissa v. Dr. Binapani Dei** and **Century Spinning & Manufacturing Co. Ltd., v. Ulhasnagar Municipal Council** the

Supreme Court unequivocally ruled that the petitioner cannot be non-suited only because some questions of facts are required to be determined by the High Court. Nevertheless, so far as the present case is concerned, we are convinced that the explanation given by M/s.Sudhakar Associates for its failure to comply with the terms of conditions could be accepted by the Court only after giving opportunity to the parties to adduce oral as well as documentary evidence and there is no extra-ordinary reason for undertaking that exercise under Article 226 of the Constitution of India, more so when an effective remedy is available to the contracting parties to file civil suit.

As an offshoot of the above discussion, we hold that the appellant has failed to make out a case for interference with the order passed by the Single Bench and the appeal is liable to be dismissed. Ordered accordingly.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD, J

March 24, 2006

svs/ARS